

SCOTT N. SCHOOLS (SCBN 9990)
United States Attorney
JOANN M. SWANSON (CSBN 88143)
Chief, Civil Division
JENNIFER S WANG (CSBN 233155)
Assistant United States Attorney

450 Golden Gate Avenue, Box 36055
San Francisco, California 94102-3495
Telephone: (415) 436-6967
Facsimile: (415) 436-6748
jennifer.s.wang@usdoj.gov

Attorneys for Defendant

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JEFFREY W. TAM,) No. 07-2747 SI
Plaintiff,)
v.)
JOHN E. POTTER,)
Defendant.)
DEFENDANT'S ANSWER TO
PLAINTIFF'S AMENDED
COMPLAINT

For his Answer to Plaintiff's Amended Complaint, Defendant John E. Potter admits, denies, and alleges as follows:

1. Plaintiff's preliminary statement contains allegations regarding plaintiff's residency, defendant's location, and a procedural history and description of the complaint. Defendant is without knowledge or information sufficient to form a belief regarding plaintiff's allegations regarding his residency, and on that basis denies them. Defendant admits that the office of the Postmaster General of the United States Postal Service is located in Washington, DC. To the extent a response is required, defendant denies all remaining allegations in the preliminary statement regarding defendant's location. The other allegations of plaintiff's preliminary

statement state a procedural history and description of the complaint, to which no response is required.

2. Defendant denies the allegations of paragraph 1.
 3. Defendant denies the allegations of paragraph 2.
 4. Defendant denies the allegations of paragraph 3.
 5. Defendant denies the allegations of paragraph 4.
 6. Defendant denies the allegations of paragraph 5.
 7. Defendant denies the allegations of paragraph 6.
 8. Defendant denies the allegations of paragraph 7.
 9. Defendant denies the allegations of paragraph 8.
 10. Defendant denies the allegations of paragraph 9.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

This court is without subject matter jurisdiction over some or all of plaintiff's claims.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, to the extent he failed to exhaust all administrative remedies.

THIRD AFFIRMATIVE DEFENSE

The complaint and each claim asserted therein fail to state a cause of action upon which relief can be granted.

FOURTH AFFIRMATIVE DEFENSE

Some or all of plaintiff's claims are barred by the doctrine of sovereign immunity.

FIFTH AFFIRMATIVE DEFENSE

To the extent plaintiff seeks relief for alleged conduct occurring more than the prescribed number of days within which he was required to file an administrative complaint, such claims are barred.

SIXTH AFFIRMATIVE DEFENSE

Each of plaintiff's claims is barred by the applicable statute of limitation, including but not limited to 42 U.S.C. section 2000e-16, 29 C.F.R. section 1614.105, and/or 29 C.F.R. section 1614.407.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's relief, if any, is limited to that provided by 42 U.S.C. sections 2000e *et seq.*, as amended by the Civil Rights Act of 1991, and 42 U.S.C. section 1981a(b)(3).

EIGHTH AFFIRMATIVE DEFENSE

Each of plaintiff's claims is barred because the actions allegedly taken against plaintiff were not adverse employment actions subject to redress under Title VII.

NINTH AFFIRMATIVE DEFENSE

Plaintiff may obtain no relief because any adverse employment actions taken against him were based on legitimate non-discriminatory reasons other than plaintiff's race, color, sex, national origin, or any prior complaints, and those reasons were and are not pretextual.

TENTH AFFIRMATIVE DEFENSE

Each of plaintiff's claims is barred because any adverse employment actions taken against him would have been taken regardless of his race, color, sex, national origin, or any prior complaints.

ELEVENTH AFFIRMATIVE DEFENSE

Each of plaintiff's claims is barred because defendant had good cause for his conduct.

TWELFTH AFFIRMATIVE DEFENSE

Any and all conduct of which plaintiff complains or which is attributable to defendant was a just and proper exercise of management discretion undertaken in good faith, for a fair and honest reason other than plaintiff's race, color, sex, national origin, or any prior complaints.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because similarly situated employees outside his protected class were not treated more favorably than he was.

1 **FOURTEENTH AFFIRMATIVE DEFENSE**

2 Any actions and/or omissions attributable to defendant were at all times privileged or
3 justified.

4 **FIFTEENTH AFFIRMATIVE DEFENSE**

5 Each of plaintiff's claims is barred to the extent he waived his right to recover.

6 **SIXTEENTH AFFIRMATIVE DEFENSE**

7 Plaintiff is equitably estopped from asserting claims against defendant because he has
8 induced, caused, and/or contributed to the alleged conduct of which he now complains.

9 **SEVENTEENTH AFFIRMATIVE DEFENSE**

10 Plaintiff's claims are barred to the extent he unreasonably delayed.

11 **EIGHTEENTH AFFIRMATIVE DEFENSE**

12 Plaintiff's recovery is barred to the extent he failed to mitigate his alleged damages.

13 **NINETEENTH AFFIRMATIVE DEFENSE**

14 Each of plaintiff's claims is barred to the extent he ratified and/or consented to any
15 conduct of which he complains.

16 **TWENTIETH AFFIRMATIVE DEFENSE**

17 Plaintiff's claims are barred, in whole or in part, to the extent it would be inequitable to
18 allow damages or other relief based on his unclean hands and/or misconduct.

19 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

20 Defendant is entitled to a set-off against any award of damages to plaintiff of any
21 outstanding debt or obligation of plaintiff to the Postal Service or any federal agency, any
22 worker's compensation, unemployment or disability benefits, any benefits under the benefit
23 plans of the Postal Service or others, and any benefits from any federal agency or federally-
24 funded agency that plaintiff receives or has received for injuries or damages alleged in the
25 complaint.

26 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

27 Plaintiff knew or should have known his claims are without reasonable basis in law and

1 equity and cannot be supported by a good faith argument for extension, modification, or
2 reversal of existing law. Defendant is therefore entitled to recover reasonable attorneys' fees,
3 expenses, and costs incurred by and through this action.

4 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

5 Plaintiff's claims are barred because plaintiff did not exhaust any grievance and/or
6 arbitration procedure created in a collective bargaining agreement.

7 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

8 The defendant is not a proper party.

9 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

10 Plaintiff may recover only those damages allowed under the law.

11 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

12 Title VII is the exclusive remedy for alleged employment discrimination by the federal
13 government, and plaintiff is precluded from bringing any other claims or seeking any relief
14 other than that provided by Title VII.

15 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

16 Plaintiff's claims are barred, in whole or in part, to the extent he failed to avail himself
17 of the mechanisms defendant established to prevent and correct any allegedly unlawful conduct.

18 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

19 Defendant reserves the right to amend this answer to assert any other defenses in law or
20 equity that may become apparent through the course of discovery.

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1 WHEREFORE, defendant prays as follows:

- 2 1. That plaintiff take nothing by way of his complaint, and that the complaint be
3 dismissed with prejudice;
4 2. For costs of suit and reasonable attorneys' fees incurred herein; and
5 3. For such other relief the Court deems proper.

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7 DATED: OCTOBER 5, 2007

Respectfully submitted,
SCOTT N. SCHOOLS
United States Attorney

9
10 /s/
11 JENNIFER S WANG
12 Assistant United States Attorney
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